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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. ~~805~~. 494

J. P. SMITH, J. D. REED AND DAVID BOAZ,
PLAINTIFFS IN ERROR,

vs.

WILLIAM T. HOLT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

FILED OCTOBER 18, 1886.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 805.

J. P. SMITH, J. D. REED AND DAVID BOAZ, PLAINTIFFS IN ERROR,

vs.

WILLIAM T. HOLT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, DECEMBER 13, 1887.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the northern district of Texas, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you or some of you, between William T. Holt, plaintiff, and Texas Investment Company, Limited; Fore, Morphy & Henderson, a firm composed of Walker Fore, W. J. Morphy & R. M. Henderson, & W. J. Morphy, J. P. Smith, J. D. Reed, & David Boaz, defendants, a manifest error hath happened, to the great damage of the said J. P. Smith, J. D. Reed, & David Boaz, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 2nd Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 22nd day of March, in the year of our Lord one thousand eight hundred and eighty-six.

[The Seal of the U. S. Circuit Court, Northern Dist. Texas, Dallas.]

A. J. HOUSTON,
Clerk of the Circuit Court of the United States for the Northern District of Texas, at Dallas.

Allowed by—
——— ———.

[Endorsed:] No. 739. Cir. court. J. P. Smith, J. D. Reed & David Boaz *vs.* Wm. T. Holt. Writ of error. Filed April 10, 1886. A. J. Houston, clerk, by Jas. D. Adams, deputy.

b United States of America to Wm. T. Holt or Ball & McCart, his attorneys of record, of Fort Worth, Tarrant county, Texas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday in October, A. D. 1886, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States in and for the northern district of Texas, at Dallas, wherein J. P. Smith, J. D. Reed, and D. Boaz are plaintiffs and the said Wm.

T. Holt is defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable A. P. McCormack, one of the judges of the circuit and judge of the district court of the United States in and for the northern district of Texas, at chambers, Graham, Texas, this 22 day of March, A. D. 1886.

A. P. McCORMICK,
U. S. Dist. Judge.

Attest seal of said court, at Dallas, Texas, April 9th, 1886.

[The seal of the U. S. Circuit Court, Northern Dist. Texas, Dallas.]

A. J. HOUSTON, *Clerk.*

[Endorsed:] No. 739. Cir. court. J. P. Smith *et al. vs.* Wm. T. Holt *et al.* Citation in error. Filed April 12, 1886. A. J. Houston, clerk, by Jas. D. Adams, deputy.

c STATE OF TEXAS, *Tarrant County:*

J. P. SMITH *et al.*, Pl'ffs in Error,

vs.

W. T. HOLT, Def't in Error.

I, W. B. Hale, being first duly sworn, do depose and say that I have this day delivered to Rob't McCart, a member of the firm of Ball & McCart, attorneys, a true copy of the citation in error in the case of J. P. Smith *et al. vs.* W. T. Holt *et al.*, signed by the Hon. A. P. McCormick, United States district judge for the northern district of Texas, of date the 22nd day of March, 1886, attested by A. J. Houston with the seal of said circuit court, at Dallas, Texas, April 9th, 1886, and that I am not a party to said suit or in anywise interested therein, and that the original citation of said copy delivered to said McCart is hereto attached and returned with this my affidavit.

W. B. HALE.

Sworn and subscribed to before me, the undersigned authority, this the 10th day of April, 1886.

[Seal Notary Public, County of Tarrant, Texas.]

ZANE CETTE,
Notary Public, Tarrant Co., Tex.

[Endorsed:] No. 739. In U. S. cir. court, Dallas, Texas. J. P. Smith *et al. vs.* Wm. T. Holt *et al.* Filed April 12, 1886. A. J. Houston, clerk, by Jas. D. Adams, deputy.

1 In the United States Circuit Court for the 5th Judicial Circuit and Northern District of Texas, Holding Sessions at Dallas.

J. P. SMITH *et al.*, Plaintiffs in Error,

vs.

WM. T. HOLT, Defendant in Error.

Be it remembered that there was opened and begun to be holden a regular term of the United States circuit court for the fifth circuit and northern district of Texas at the city of Dallas, in Dallas county, and said circuit and said district, on the 11th day of January, A. D. 1886, it being the second Monday in said month in said year and the day fixed by law for commencing a regular term of said court at said place; present and presiding, the Hon. Andrew P. McCormick, United States district judge for the northern district of Texas; Charles B. Pearre, United States attorney for said district; W. L. Cabell, United States marshal for said district, and A. J. Houston, clerk of said court; when and where the following proceedings were had, to wit:

2 *Original Petition. Filed Ap'l* 1, 1885.

STATE OF TEXAS, *United States of America:*

In the Circuit Court of the United States for the Northern District of Texas, at Dallas.

To the honorable judges of said circuit court.

Your petitioner, William T. Holt, hereinafter styled plaintiff, complaining of the "Texas Investment Company, Limited," a private corporation duly incorporated; Fore, Murphy & Henderson, a copartnership firm, the name of whose members are Walker Fore, R. M. Henderson, and W. J. Murphy; W. J. Murphy, individually; David Boaz, James D. Reed, and J. P. Smith, all of whom are hereinafter styled defendants, would respectfully represent and show to your honorable court—

That the plaintiff is a citizen of the State of Colorado; that the defendant, The Texas Investment Company, Limited, has its principal office in Tarrant county, Texas, the defendant, W. J. Murphy, who resides in El Paso county, being the president thereof; that the defendants, Walker Fore and R. M. Henderson, reside in Hopkins county, in said State of Texas; that the defendants, David Boaz, James D. Reed, and J. P. Smith reside in said county of Tarrant, State of Texas, and are citizens of said respective county and of the State of Texas.

That heretofore, to wit, on the 10th day of June, 1884, the plaintiffs made and entered into a certain contract in writing with the defendant, The Texas Investment Company, Limited, whereby said

3 defendant company bargained, sold, and agreed to deliver to plaintiff, within seventy days from that date, upon plaintiff's ranch, in the Territory of New Mexico, twenty-five hundred head of yearling heifers (cattle), to be of the kind and quality speci-

fied in said written contract and whereby plaintiff agreed to receive said cattle at the time and place mentioned, and to pay for the same at the rate of seventeen ($17) dollars per head, less the sum of fourteen thousand eight hundred and twenty dollars (14,820), which sum plaintiff had then and there at the time of the execution and delivery of said contract advanced and paid over to said company on account of said purchase (receipt whereof was acknowledged in said contract), the balance of said purchase money to be paid by plaintiff to said company on demand, within twenty-four hours after the counting and delivery of said cattle, in drafts being current New York exchange or in his own check on the First National Bank of Portland, Maine, in manner and form as was by said contract provided.

It was also provided by said contract that a variation in the number of cattle delivered thereunder not exceeding 300 head less or 100 head more than the number agreed on should not be deemed a breach, but should be held as a substantial compliance with said contract.

Said def't Co. further agreed by the terms of said contract to sell and deliver to plaintiff at said time and place between thirty and forty head of horses of the kind & quality therein mentioned at the price of fifty-six ($56) dollars per head; also to pur-
4 chase and deliver with said cattle and horses, at cost price, a certain wagon, harness, saddles, bridle, and camp equipments therein specified and described.

It was further agreed thereby that in the event of a breach of said contract or failure to comply with the terms thereof (unavoidable accidents only excepted) on the part of said defendant company, then said defendant would, upon demand, within twenty days after the expiration of said seventy (70) days from the date of said contract, repay to plaintiff the full sum of $14,820.00 advanced by plaintiff as aforesaid, together with the further sum of five thousand ($5,000.00) in liquidation of all demands, damages, sustained by plaintiff by reason of such a breach; and in the event of a breach thereof on the part of the plaintiff he should forfeit to defendant company one-half of the said sum of $14,820.00 in full payment of all damages resulting from said breach to def't Co., and that the other half of said $14,820.00 should be repaid to him, said plaintiff, on demand, within thirty (30) days after such breach.

It was further provided by said contract that said def't Co. should notify plaintiff of the shipment of the cattle to Pecos river, when the same should be loaded on the cars, by a telegram addressed to the "Holt Line Stock Company, Opera House, Denver, Colorado," stating when said cattle would probably reach Pecos station (or wher-
5 ever unloaded); said def't Co. should cause a second telegram to be sent said plaintiff at his said Denver address stating when, approximately, the cattle would reach his said ranch.

It was further agreed that in case said plaintiff should have not exceeding three car-loads of bulls at Pecos station before said cattle should be driven northward, then def't Co. should drive said bulls along with said heifers to plaintiff's ranch without charge.

Plaintiff says that the substance of said contract is hereinbefore stated, but that for greater certainty he attaches hereto as part hereof a copy of said contract, which he marks "Exhibit A."

Plaintiff would show that at the time of the execution of said contract and of the bond hereinafter described he, pl'ff, did, in accordance with said contract, advance and pay to said defendant company the said sum of $14,820.00 as an advance payment on said cattle, as provided for in said contract; that on, to wit, said 10th day of June, 1884, and simultaneously with the execution of said contract, the said defendant company, as principal, and the said def'ts Fore, Morphy and Henderson, W. J. Morphy, D. Boaz, J. D. Reed, and J. P. Smith, as sureties, did execute and deliver to plaintiff their joint and several obligation-, whereby they acknowledged that they, said defendants, were jointly and severally held and firmly bound unto plaintiff and his assigns in the sum of twenty thousand dollars ($20,000), to be paid in lawful currency of the United States, the conditions being such that if the said def't company should in all respects well and truly fulfill and perform each and every
6 its duties and obligations as in the said agreement of June 10th (a copy whereof was attached to said bond) set forth and expressed, then said obligation should become null and void; otherwise to be and remain in full virtue.

For more certainty, plaintiff attaches hereto as part hereof a copy of said bond, the same being marked "Exhibit B."

That plaintiff did, in all respects, comply with and perform said contract, in so far as the same required the doing or performing of any matter or thing by him, but that said defendant, Texas Investment Company, Limited, did, without any just or lawful reason or excuse, wholly fail and refuse to fulfill or perform any part of said contract or any of its duties and obligations as set forth and expressed in said contract, and did, without any just or lawful reason or excuse, and although afterward requested thereto by plaintiff, wholly fail and refuse to deliver to plaintiff said cattle, horses, wagon, harness, and other property or any part thereof as provided for in said contract, and did wholly fail and refuse, within twenty days after the expiration of said seventy days from the date of said contract, to repay to plaintiff the said sum of $14,820.00 advanced by him upon said contract as aforesaid or any part thereof, or to pay to him the said sum of $5,000.00, stipulated damages, as provided for in said contract or any part thereof, and still so fails and refuses, although plaintiff has made due demand therefor as provided in said contract, to this plaintiff's damage, twenty thousand dollars.

7 And plaintiff says that the said Texas Investment Company, Limited, and the other defendants and sureties on said obligation have, by reason of the facts hereinbefore related, become liable to him to the full amount of said obligation, yet to pay the same or any part thereof they have totally failed and refused and still so fail and refuse, although often thereunto requested by plaintiff, to his damage twenty thousand dollars. Wherefore he prays that citation issue against said defendants as the law directs, and

that he have judgment against said defendants for his said damage, being the amount of said bond, and for costs.

BALL & McCART,
Att'ys for Pl'ff.

"EXHIBIT A."

Copy of Contract.

This agreement, made and entered into at Socorro, New Mexico, this 10th day of June, 1884, by and between the Texas Investment Company, Limited, a corporation organized and existing under the laws of the State of Texas, and having its principal office at Fort Worth, in said State, by J. S. Brooks, then manager for New Mexico and Arizona, party of the first part, and William T. Holt, of Portland, Maine, party of the second part, witnesseth: That said party of the first part, for and in consideration of the sum of one dollar to it in hand paid by said party of the second part, receipt whereof is hereby acknowledged, hath bargained and sold and doth
8 hereby grant, bargain, and sell and agree to deliver unto the party of the second part, within seventy (70) days from the date hereof, upon the ranch of the said party of the second part, near the Pecos river and between the Rio Penasco and Rio Hondo, at a point to be designated by said party of the second part on or before the time of delivery aforesaid, in the county of Lincoln, Territory of New Mexico, twenty-five hundred (2,500) head of yearling heifers, to be all first-class Central Texas prairie raised, to be full age (one year old) June the 15th inst., and to be good, smooth, merchantable cattle in good medium condition, and to exclude all "runts," maimed, diseased, or deformed cattle; and said party of the first part further agrees that the cattle so to be delivered shall average in all respects with the range cattle of that portion of Texas lying north of Hays county and west of the line of the Houston and Texas Central railway; and the party of the second part, in consideration of the premises, agree- to receive the above-described cattle by himself or agent within the time and at the place above mentioned, and to pay for the same at the rate of ($17.00) seventeen dollars for each and every head so delivered in accordance with the foregoing specifications, less the sum of fourteen thousand eight hundred and twenty ($14,820.00) dollars, which sum the said party of the second part has this day advanced and paid unto the said party of the first part on account of said purchase and under the provisions of this contract, and receipt of which is hereby acknowledged by said party of the first part.
9 The balance of said purchase-money found to be due from said party of the second part to the party of the first part upon the delivery as aforesaid of the within-bargained chattels shall be paid by the said second party to the said first party or to its duly authorized agent, upon demand, within twenty-four hours after the counting out and delivery of said cattle as aforesaid, provided the cattle conform to the specifications herein made, in drafts, to be current New York exchange or in his own checks on the First National

Bank of Portland, Maine, with said bank's circular letter of credit attached, at the option of the said party of the second part.

And it is further agreed that a variation in the number of cattle delivered hereunder, if not exceeding three hundred (300) less or one hundred head more (100) than the number hereinbefore specified, shall not be deemed a breach of contract, but such less or greater number shall be accepted as a substantial fulfillment hereof.

And the party of the first part further agrees to sell and deliver to the party of the second part within the time and at the place mentioned between thirty and forty (40) head of horses, to be good merchantable geldings, in sound condition, not less than fifteen (15) hands high, broken to the saddle, and not over six (6) years old, at fifty-six (56) dollars per head.

Also to purchase and deliver with above-bargained chattels to the party of the second part, at cash price thereof, one (1) 3 to 3½-
10 inch Shuttler, Bain, or Studbaker wagon, with one (1) set of heavy double harness and the saddles, bridles, and camp equipments necessary for use in driving said cattle from railroad to said place of delivery.

And it is further agreed by the parties hereto that in event of a breach of this contract or failure to comply with the terms hereof (unavoidable accidents only excepted) on the part of the party of the first part, then — party shall and will, upon demand, within twenty days (20) after the expiration of said seventy (70) days from the date of this contract repay to said party of the second part the full sum of fourteen thousand eight hundred and twenty dollars (14,820.00) by him this day advanced to said party of the first part, together with the further sum of five thousand dollars ($5,000.00), in liquidation of all demands — damages sustained by said party of the second part by reason of such breach or non-fulfillment of this contract.

And in event of a breach or non-fulfillment hereof by said party of the second part (unavoidable accidents alone excepted) he shall forfeit to the said party of the first part one-half of the above-stated sum of fourteen thousand eight hundred and twenty dollars ($14,820.00) this day advanced by him to said party of the first part in full payment and final settlement of all damages from such breach resulting, and the other one-half of said $14,820.00 shall be repaid to him, the party of the second part, or his representatives on demand within thirty (30) days after such breach.

11 It is further agreed that said first party shall notify said second party of the shipment of said cattle to the Pecos river, when the same are loaded on the cars, by a telegram addressed to the "Holt Live Stock Company," Opera House, Denver, Colorado, state- when cattle will probably reach "Pecos station" (or whereever unloaded). Said first party shall cause a second telegram to be sent said second party at his said Denver address stating when, approximately, the cattle will reach the said ranch.

And, in case said second party shall have not exceeding three (3) car-loads of bulls at Pecos station before said bargained cattle are driven northward, the first party shall drive said bulls along with said heifers to the ranch of the second party without charge.

Signed this 10th day of June, 1884.

(Signed) TEXAS INVESTMENT COMPANY, LIMITED,
By J. L. BROOKS,
Manager for New Mexico and Arizona.

(Signed) WM. T. HOLT.

Witness:
M. W. BROWN.

"EXHIBIT B."

Copy of Bond.

STATE OF TEXAS, } ss:
County of Tarrant, }

Know all men by these presents that the "Texas Investment Company, Limited," a corporation organized and existing under
12 the laws of the said State of Texas and having its principal office at the city of Fort Worth, in the said county and State, as principal, and J. D. Reed, J. P. Smith, D. Boaz, Fore, Morphy, and Henderson, and W. J. Morphy, all of Fort Worth aforesaid, as sureties, are, jointly and severally, held and firmly bound unto William T. Holt, of Portland, Maine, and his assigns in the sum of twenty thousand dollars ($20,000.00), to be paid, in lawful currency of the United States of America, unto the said William T. Holt, his assigns and legal representatives; which payment, well and truly to be made, we, jointly and severally, bind ourselves, heirs, executors, and administrators, firmly by these presents.

In testimony whereof witness our hands and seals this 10th day of June, 1884.

The conditions of the above obligation is such that whereas the principal obligee, "The Texas Investment Company, Limited," did, on or about the 10th day of June, A. D. 1884, by J. L. Brooks, its manager for New Mexico and Arizona, at Socorro, New Mexico, make and enter into an agreement with William T. Holt for the sale and delivery to him of certain cattle and the accounting for and disposition of a certain sum of money to the said company paid by the said William T. Holt on account of said agreement, a copy of which agreement, duly executed by both of said parties, is hereunto annexed:

Now, therefore, if the said principal, The "Texas Invest-
13 ment Company, Limited," shall in all respects and truly fulfill and perform each and every its duties and obligations as in the said agreement of June 10th, 1884, set forth and expressed, then and in that case this obligation shall become null and void; otherwise to be and remain in full force and virtue.

TEXAS INVESTMENT CO., LIMITED,
W. J. MORPHY, *Pres.*
FORE, MORPHY AND HENDERSON.
W. J. MORPHY.
J. D. REED.
J. P. SMITH.

(Endorsed:) In the United States circuit court, northern district of Texas, at Dallas. No. 739. Wm. T. Holt, plaintiff, *vs.* Texas Investment Company, Limited, *et als.*, defendants. Original petition. Filed April 1, 1885. A. J. Houston, clerk, by Jas. D. Adams, deputy. Ball & McCart, att'ys for plaintiff.

14 *Amended Answer of Reed & Smith. Filed Feb.* 9, 1886.

Suit Pending in the U. S. C. C., Northern District of Texas, at Dallas, Texas.

WM. T. HOLT
vs.
TEXAS INVESTMENT CO., Limited, *et al.* } No. 739.

Now comes J. D. Reed & J. P. Smith, defendants, and amend their original answer filed herein on the 21st of May, 1885, & demur to plaintiff's original petition & says the same is not sufficient in law. Of this they pray judgment.

They demur specially to so much of the said petition as claims five thousand dollars as liquidated damages. Of this they pray judgment.

And for special answer & defense these def'ts say that they did sign said bond set out in plaintiff's petition, as sureties, only for said defendant, The Texas Investment Co., Limited, & not otherwise; that afterwards & before the time for the performance of the contract which the said bond was given to secure the performance of the said plaintiff and the said Texas Investment Co., Limited, without the consent of these def'ts and without their knowledge, for a valuable consideration and mutual benefits and advantages accruing to each, entered into a contract and agreement whereby the time for the delivery of said cattle was extended to a dif-erent and further time, to wit, Sept. 10th, 1884, by reason of which these defendants are released from & discharged of the said obligations in said
15 bond contained. Of-ering to verrify they pray judgment.

(Signed) H. C. LEAKE,
H. G. ROBERTSON,
CARTER, WYNNE & DE BERRY,
Att'ys for Reed & Smith.

(Endorsed:) No. 739. Wm. T. Holt *vs.* Texas Investment Co., Limited, *et al.* Amended answer of Reed & Smith. Filed Feb'y 9, 1886. A. J. Houston, clerk.

Original Answer of D. Boaz and Walker ——. *Filed May* 21, 1885.

In Circuit Court of the United States for the Northern Dist. of Texas, at Dallas.

WILLIAM T. HOLT
vs.
THE TEXAS INVESTMENT —, Limited, *et al.* } No. 739.

Now come D. Boaz and Walker Fore, *three* of the defendants in the above-styled cause, and demur to plaintiff's petition filed herein against them, and say the same is insufficient in law to compell defendants to answer thereto, and of this they pray judgment of the court.

(Signed) O'NEIL, HUNTER & STEWART,
Att'ys for Defendants.

Further answering, these defendants deny all and singular the allegations contained in plaintiff's said petition and demand strict proof, and of this they put themselves upon the country.

(Signed) O'NEIL, HUNTER & STEWART,
Att'ys for Def'ts.

16 And for special plea and answer herein these defendants say, that if the Texas Investment Company, Limited, as charged in plaintiff's said petition, did, on the 10th day of June, 1884, enter into a contract with the plaintiff, W. T. Holt, for the sale and delivery to him, the said Holt, of twenty-five hundred head of yearling heifers and between thirty and forty head of horses and other property at his, the said Holt's, ranch, in New Mexico, within seventy days from the 10th day of June, 1884, the date of said contract, and if said Texas Investment Company, Limited, did, on said 10th day of June, 1884, as alleged in plaintiff's petition, make and deliver to said Wm. T. Holt a bond, with these defendants and others as sureties, whereon said Texas Investment Company, Limited, and said sureties bound themselves, jointly and severally, in the sum of $20,000.00 for the faithfull performance of said contract on the part of said Texas Investment Co., Limited, and whereon the said Texas Investment Company, Limited, and these defendants, as sureties, undertook and bound themselves to deliver said yearling heifers, horses, and other property to said Holt on his said ranch, in New Mexico, within seventy days from the 10th day of June, 1884, the date of said bond and contract, then these defendants aver and charge that the said Wm. T. Holt, payee in said bond and plaintiff herein, after the execution and delivery of said obligation, to wit, on or about the 16th day of July, 1884, without permission or authority from these defendants or either of them and without their knowledge, entered into a valid and binding contract with

17 the said Texas Investment Company, Limited, for an extension of the time within which said contract was to be performed; that said Wm. T. Holt, on or about the 16th day of July, 1884, as aforesaid, without the consent or knowledge of these defendants or

either of them as aforesaid, applied to said Texas Investment Company, Limited, for a change and alteration of said contract as to the time in which said contract was — be performed and said heifers and other property delivered, and that said Holt and said Texas Investment Company, Limited, did, without the consent or knowledge of these defendants or either of them, on or about the 16th day of July, 1884, aforesaid, alter and change said contract and bond, and extended the time within which said cattle and other property were to be delivered beyond the time fixed and agreed on in said bond and contract and to another and different time than that agreed on and assented to by these defendants in said obligation.

Wherefore defendants say that by reason of this unauthorized alteration and enlargement of the liabilities imposed by s'd bond herein sued on plaintiff ought not to have & recovery anything of them by reason of his said suit, and this they are ready to verify.

(Signed) O'NEIL, HUNTER & STEWART,
Att'ys for Def'ts, D. Boaz & Walker Fore.

(Endorsed:) No. 739. Wm. T. Holt *vs.* The Texas Investment Company, Limited, *et al.* Original answer of D. Boaz & Walker Fore. Filed May 21, 1885. A. J. Houston, clerk, by Jas. D. Adams, deputy.

18 *Def'ts' Bill of Exception- No.* 1. *Filed Feb'y* 23, 1886.

Suit in the U. S. C. C. for the Northern District of Texas, at Dallas, Texas.

WM. T. HOLT
vs.
THE TEXAS INVESTMENT CO., Limited, J. P. SMITH, J. D. Reed, D. Boaz, Fore, Morphy & Henderson, W. J. Morphy. } No. 739.

Bill of exceptions No. 1.

Be it remembered that on the trial of this cause the plaintiff read his petition and the exhibits thereto attached. The defendants then and there interposed and urged their special demurrer to that portion of plaintiff's petition claiming five thousand dollars as liquidated damages. The court, after hearing the arguments on said demurrer, & being fully advised, overruled the same, and adjudged def'ts to pay all costs thereof; to which ruling of the court the defendants, J. P. Smith, J. D. Reed, & D. Boaz, then & there excepted and then & there presented this their bill of exceptions, & pray the court to settle, allow, & approve the same, sign & seal it & file as a part of the record in this cause, which is accordingly done.

(Signed) A. P. McCORMICK, *Judge.*

(Endorsed:) No. 739. Wm. T. Holt *vs.* Texas Investment Co., Limited, *et al.* Def'ts' bill of exceptions No. 1. Filed Feb'y 23, 1886. A. J. Houston, clerk.

19 *Bill of Exceptions No.* 2. *Filed Feb'y* 13, 1886.

Suit Pending in the United States Circuit Court, Northern District of Texas, at Dallas, Texas.

WM. T. HOLT, Plaintiff,

vs.

TEXAS INVESTMENT COMPANY, L., *et al.*, Defendants.

Be it remembered that on the trial of the above cause, before the honorable circuit court of the United States for the northern district of Texas, at Dallas, Texas, the following bill of exceptions was had and taken by the defendants, to wit:

Bill No. III.

It was proven on the trial that the defendants, J. P. Smith, J. D. Reed, and David Boaz, were sureties on the bond described in the foregoing petition for the faithful performance of the contract described in said petition, and that after the execution of said bond and contract and before the time arrived for the Texas Investment Company, Limited, to deliver the cattle under said contract the plaintiff herein, W. T. Holt, from the village of Seven Rivers, New Mexico, wrote and deposited in the mail, addressed to the Texas Investment Company, Limited, at its place of business, in Fort Worth, Texas, the following letter:

"SEVEN RIVERS, N. M., *July 16th*, 1884.

"To the Texas Investment Co., Limited, Fort Worth, Texas.

20 "GENTLEMEN: I find the grass here and all along the Pecos further south very short and dry. The rain is later than usual this season and the drive up from Pecos station will be proportionately worse. I have, therefore, thought it might be to your interest to have a little more time on the delivery of heifers sold me. If you would like an extension of twenty (20) days, say until the 10th of September, please wire me promptly at Fort Stanton, N. M., and I will grant the extension, but must know all about it at once.

"Yours truly, WM. T. HOLT.

"My post office will be Roswell, N. M."

It was also proven that this letter was duly received by said Texas Investment Company, Limited, at its place of business, in Fort Worth, on the 21st day of July, 1884, and, immediately on receipt of same and in reply thereto, J. W. Morphy, president of said Investment Company, Limited, in the name of said company, sent a dispatch or telegram to said Holt, plaintiff herein, directed to Fort Stanton, New Mexico, stating that said company would accept and agree to the extension referred to in said letter; that said Morphy also in the

name of said company, also on the same day, but after sending said telegram, wrote and sent, by depositing in the mail, the following letter to said Holt:

"Texas Investment Company, Limited. Paid-up capital stock, 100,000.

"FORT WORTH, TEXAS, *July* 21, '84.

21 "Wm. T. Holt, Esq., Roswell, N. M.

"DEAR SIR: Replying to yours of the 16th inst., we would say we have advised you by wire that we will postpone delivery for you, as per your request, until September 10th. We believe your suggestion a good one.

"Yours very truly,

"TEXAS INVESTMENT CO., LIMITED,

"B."

There was also testimony showing that said Holt received said telegram at Fort Stanton between the 24th day of July, 1884, and the 27th day of July, 1884, and that he afterwards received the last-mentioned letter from said company.

The plaintiff also testified in this case that on the same day, after he had written said letter of the 16th of July, 1884, referring to said extension above given, that he also wrote and mailed at the same time to said Investment Company, Limited, at Fort Worth, Texas, but under a different cover or envelope, the following letter and form of contract:

"SEVEN RIVERS, N. M., *July 16th*, 1884.

"To the Texas Investment Co., Limited, Fort Worth, Texas.

"GENTLEMEN: Referring to my letter of this a. m., I have to ask, in view of the infrequency of our mails here, that in case your company desires to arrange the proposed extension of twenty days you will have the goodness to notify the other sureties on bond and get consent of all before wiring me. This will save the delay of

22 my contemplated correspondence with them, and, if the extra twenty days suit all parties in interest, I will then prepare and forward you the necessary papers for execution.

"Very respectfully yours, W. T. HOLT."

"P. S.—I find by enquiry here that there is only a weekly mail from Texas to this point and a bi-weekly from here to Roswell. To expedite matters, I have therefore drawn up a simple form of assent, which I herewith enclose, to be signed by your company and the several sureties and returned to me at Roswell, and on receipt of same I will execute and mail to you my agreement extending delivery till September 10th, 1884. This will expedite matters somewhat, but I still desire you to wire me, as first suggested (via Stanton), whether or not the proposed extension will be acceptable to all concerned.

"Very respectfully, &c., W. T. HOLT."

(Copy.)

"Whereas we, the undersigned, principal and sureties upon a certain bond given to Wm. T. Holt, of Portland, Maine, on or about June 10th, in the sum of $20,000.00, for the faithful performance by said principal, the Texas Investment Company, Limited, of its said contract with said Holt of the date aforesaid, are desirous that said contract should be so modified in respect only to the time of its fulfillment as to give said investment company twenty days' longer time within which to fulfill the same; and

23 "Whereas the said Holt is willing to agree to such modification: now,

"Therefore, in consideration of the premises and of one dollar to each of us in hand paid, we do hereby jointly and severally consent and agree with the said Holt, his heirs and assigns, that such modification of said contract shall not be held as in anywise changing or impairing our liability under said bond, nor shall such extension, if agreed to and granted by said Holt, be construed as any waiver, impairment, or forfeiture on his part of the security sought and intended to be by said bond created.

"In testimony whereof witness our hands and seals this — day — July, 1884."

As to whether said last-mentioned letter and enclosure was so written and mailed was a disputed fact in this case, and whether such letter was ever received by said investment company was a disputed fact, there being testimony tending to show that such letter was written and duly mailed and other testimony tending to show that it was never received by said Texas Investment Company.

It was in testimony that Smith and Reed were told by Morphy of the receipt of said first-named letter and the replies thereto the same day said letter was received and replies sent, but after the replies were sent.

The proof showed a failure on the part of the investment company to comply with its contract, and the entire breach, as alleged, was proven.

There was no proof of any special damage resulting from a breach of the contract, but the plaintiff relied upon the stipu-

24 lated sum of $5,000.00 liquidated damages named in the contract.

There was evidence tending to prove that the defendant, Texas Investment Company, Limited, had some cattle on hand at the time of the receipt of said letter and afterwards sold said cattle to other parties, and that Holt expected the execution and return to him by all the parties to the bond of the memorandum sent by him in his second letter of July 16th, 1884. It was proven by plaintiff that W. J. Morphy was the president and J. P. Smith and J. D. Reed the vice-presidents of said company from the date of its incorporation, Nov., 1883, until the failure of the company, in August, 1884; that under the by-laws said president was authorized to execute contracts under the direction of the executive committee, of which committee Smith and Reed were members. There was proof that

said president was in the habit of executing contracts without the direction of said committee, and that said executive committee had never had a meeting; that said corporation was incorporated to and did buy & sell live stock, horses, cattle, sheep, stocks, bonds, &c., on its own account & on commission account.

Upon this evidence the said defendants asked the court to charge the jury, to wit:

Charge No. I.

"The jury are instructed that if they find in this case that Morphy was president of the Texas Investment Company, Limited, at the time of the alleged extension of time on the contract sued on, and was, under the testimony, in the habit of acting as the gen-
25 eral business agent of the corporation with its knowledge and without objection, actual authority may be inferred from such acts, and the company would be bound by them, and you are instructed that if with such authority said Morphy, as president, accepted a proposition extending the time of the delivery of the cattle under the contract sued on, that such act would be binding on the corporation, and you should so find."

This charge the court then and there refused to give, and the said defendants then and there excepted, and tendered their bill of exceptions, which was signed, sealed, and allowed by the court.

Charge No. II.

"The defendants, J. P. Smith, J. D. Reed, Boaz, Henderson and Fore, ask the court to charge the jury that any material alterations in the terms of the contract between plaintiff, W. T. Holt, and the defendant, The Texas Investment Company, Limited, without the consent of the defendants, Smith, Reed, Boaz, Henderson and Fore, would release them."

Which charge the court then and there refused to give, and said defendants then and there excepted.

Charge No. III.

"The jury are instructed that if they believe from the evidence that at the time the plaintiff wrote the letter of date July 16, 1884, wherein plaintiff proposed to grant to defendants, The Texas Investment Company, Limited, an extension of time for the delivery of the cattle mentioned in the contract sued on; that plaintiff wrote and mailed another letter enclosed in a different cover or envelope, containing another proposition or a modification of the proposi-
26 tion first requiring the sureties to join in such extension, and the first proposition made to the investment company, without referring to or requiring the assent of the sureties, was alone received by said investment company and accepted by it without the knowledge or assent of the sureties, then this would constitute a binding contract between the principals, and would be such a change or

alteration in the original contract as would operate a release of such surety therefrom."

Which charge was then and there refused by the court, and said defendants then and there excepted.

Bill Number III.

"The court then instructed the jury as follows:

"The defendant company contracted with the plaintiff to deliver to him, at his ranch in New Mexico, at the time specified in the contract, a certain number and description of cattle stated in the contract, and at the time of making the contract received from the plaintiff $14,820.00 thereon, and stipulated and bound itself in case of a breach of its contract to return to the plaintiff said sum of $14,820.00, and to pay the plaintiff as assessed damages for such breach the further sum of $5,000.00; and to secure the performance of these stipulations the defendant company and the other defendants who signed the same gave a bond to the plaintiff in the sum of $20,000.00. These papers, the contract and bond, we construe to bind all the defendants who signed said bond to pay the plaintiff, upon the defendant company's failure to deliver said cattle, the sum of $14,820 received from the plaintiff on said contract, and
27 the further sum of $5,000.00, assessed damages by said contract for its breach. I say all the defendants who signed the bond, two of the defendants whose names appear to the bond, have plead in proper form and manner that they did not execute said bond, and the only proof of execution as to them is that Morphy, undertaking to act for the firm of Fore, Morphy & Henderson, signed said names to the bond as a partnership. The proof in reference to the partnership does not show, but negatives the proposition that the act was within the scope of the partnership. You are therefore directed to find for the defendants Fore & Henderson that they did not execute the bond and are not liable thereon.

"The only defense presented by the other defendants, in support of which any proof has been offered, is that the plaintiff, without the consent of the securities on said bond, granted the defendant company an extension of time for the performance of said contract, and thus released said sureties; and to support this defense they rely upon a letter of the plaintiff dated 16th July, and offered by defendants in evidence, suggesting an extension, and the response to said letter made by the president of the defendant company in its name. We are of opinion that said letter does not constitute such a proposition for an extension of time as could by the acceptance of the president of the company (or the company acting by the president alone) become a binding agreement for such extension without the consent of the sureties and release them thereunder.

"You are therefore directed to find for the plaintiff against the defendant company the amount, $14,820 and $5,000.00, and
28 eight per cent. per annum interest thereon from the 20 of August, 1884, and against the other defendants who signed said bond so much of said sum as shall not exceed $20,000.

"(Signed) A. P. McCORMICK, *Judge.*"

And to that portion of the court's charge which told the jury that they should find the $5,000.00 named in said contract as liquidated damages and plaintiff entitled to the same, the said defendants then and there excepted, because that was only a penalty and there was no evidence of such damages.

And to that portion of the charge of the court which instructed the jury that the plaintiff's said letter of the 16 July, 1884, was not such a letter as made a distinct proposition for extension of the time for the performance of the contract for delivery of the cattle defendants then and there excepted, because said letter clearly did propose an extension of time within which to deliver said cattle.

And to that portion of the court's charge which instructed the jury that the acceptance of such terms contained in said letter by the president of said company for said company, or by the said company acting by its president alone, would not and did not create a binding contract for the entension of time within which to deliver the said cattle def'ts then and there excepted.

And to that portion of the court's charge directing a verdict against these defendants and withdrawing from them the
29 consideration of the defense made defendants then and there excepted.

And to that portion of the charge wherein the court instructed the jury that the letter of the 16th of July, 1884, was not a proposition for the extension of time for the delivery of the cattle that could be accepted so as to complete a binding contract the defendants then and there excepted for the reason that said letter, together with the circumstances under which it was written and the acts of the parties showing their intention in the writing of the same and the acceptance thereof, ought to have been submitted to the jury as a question of fact as to what was intended thereby.

The foregoing bills of exception examined and settled and ordered filed as a part of the record in this cause.

Feb'y 13, 1886.

(Signed) A. P. McCORMICK, *Judge.*

(Endorsed:) No. 739. W. T. Hall *vs.* The Texas Investment Co., Limited, *et al.* Bill of exceptions No. 2. Filed Feb'y 13, 1886. A. J. Houston, clerk.

Bill of Exceptions No. 3. *Filed Feb'y* 13, 1886.

HOLT *vs.* TEXAS INVESTMENT CO., Limited.

Bill of exceptions.

Be it remembered that on the trial of the above-entitled cause the plaintiff proved by W. J. Morphy that he was, at the time of
30 receipt of the letter of plaintiff of date July 16, proposing an extension of time for the delivery of cattle under the contract, the president of the Texas Investment Company, Limited, and its general business manager; that the by-laws of said company were lost, and that he thought they contained a provision that he

was authorized to make contracts for said mentioned company and transact its business under the direction of the executive committee of said company. Defendant next offered to prove by said Morphy that he had been accustomed to exercise the authority to make contracts, accept and grant extension on contracts, and generally to attend to the business of the company without consulting with or being directed by said executive committee, and his acts so done had been recognized and acqui-s-ed in by said mentioned company, and that at the time referred to, when he sent his telegram and letter accepting his proposition of extension, he was in the habit of exercising *under* authority for said company without consulting with or being specially directed so to do by said executive committee. To all this proof offered by the defendants & relating to the
31 authority of said Murphy in the premises plaintiff objected because the same was immaterial and improper, and the objection was sustained by the court and the testimony was excluded from the jury, to which action then defendants then and there were so offered and excluded excepted, and now tender them their bill of exception, and ask that it may be allowed and filed and made part of the record in this case.

Feb'y 13, 1886.

(Signed) A. P. McCORMICK, *Judge.*

(Endorsed:) No. 739. Wm. Holt *vs.* Texas Investment Co., Limited, *et al.* Bill of exceptions No. 3. Filed Feb'y 13, 1886. (Signed) A. J. Houston, clerk.

Judgment Entered Feb. 13, 1886.

W. T. HOLT
vs.
TEXAS INVESTMENT COMPANY, LIMITED, *et al.* } No. 739.

On Saturday, February 13, 1886, came on to be heard the above-entitled cause, and, all parties having announced ready for trial, thereupon came the following jury, viz: J. W. Champion, W. H. Dial, W. C. Forrester, S. H. Horton, W. T. Holcomb, J. A. Lilly, J. C. Merrick, W. S. McDuffie, J. W. Neatherly, G. R. Sears, W. H. Taylor, and M. B. Yarbrough, who were duly empaneled and sworn, and, after hearing the evidence, the argument of counsel, and the charge of the court, retired, and afterwards brought into open
32 court the following verdict, viz:

"We, the jury, find for the plaintiff against the above-entitled company the sum of twenty-two thousand one hundred and sixty-three dollars and fourteen ($22,163.14) cents, and against the following-named sureties, J. D. Reed, J. P. Smith, D. Boaz, and W. J. Morphy, in the sum of twenty thousand ($20,000) dollars.

"(Signed) W. S. McDUFFEY, *Foreman.*"

Wherefore it is considered and adjudged by the court that the said defendant, Texas Investment Company, Limited, as principal,

and the said defendants, J. D. Reed, J. P. Smith, D. Boaz, and W. J. Morphy, as sureties, on the bond in controversy herein, described in plaintiff's petition, are jointly and severally liable to the plaintiff in the full amount of twenty thousand dollars, the penalty fixed in said bond, and that the said plaintiff, Wm. T. Holt, do have and recover of and from said defendants the said sum of twenty thousand dollars, with interest thereon at the rate of eight per cent. per annum from this date, together with all his costs herein expended, for which let execution issue. It is further considered and adjudged by the court that said plaintiff do have and recover of and
33 from the said Texas Investment Company, Limited, the sum of two thousand one hundred and sixty-three dollars and fourteen cents, in addition to the said sum of twenty thousand dollars, for which let execution issue. It is further considered and adjudged that the plaintiff take nothing by his said suit as against the defendants, Walker Fore and R. M. Henderson, and that they go hence without day and have and recover of and from the plaintiff all their costs in this behalf expended, for which execution may issue.

Assignment of Errors by Smith, Reed & Boaz. Filed July 22, 1886.

In the Supreme Court of the United States.

J. P. SMITH, J. D. REED, and D. BOAZ, Plaintiffs in Error,

vs.

W. F. HOLT, Defendant in Error.

Writ of error from northern district of Texas.

Now comes the plaintiffs in error, J. P. Smith, J. D. Reed, & D. Boaz, and assign the following errors committed by the United — circuit court for the northern district of Texas, at Dallas, Texas,
34 in the cause of W. T. Holt *vs.* The Texas Investment Co., Limited, *et al.*, No. 739 on the docket of said court, upon & for which errors J. P. Smith, J. D. Reed, & D. Boaz pray the Honorable Supreme Court of the United States to reverse the judgment of the said circuit court.

1st error. The circuit court erred in not sustaining the special demurrer of J. P. Smith and J. D. Reid to that portion of plaintiff's petition claiming five thousand dollars as liquidated damages, as shown by their bill of exceptions numbered one.

II error. The court erred in its charge to the jury wherein it instructed the jury in these words: "These papers—the contract and bond—we construe to bind all the defendants who signed said bond to pay to the plaintiff, upon the defendant company's failure to deliver said cattle, the sum of $14,820, received from the plaintiff on said contract, and the further sum of $5,000 assessed damages by said contract for its branches;" and in another portion of said charge, wherein the court instructed the jury as follows: "You are therefore

directed to find for the plaintiff against the defendant company the amount of $14,820 and $5,000, and eight per cent. per annum interest thereon from the 20 of August, 1884, and against the
35 other defendants who signed said bond so much of said sum as shall not exceed $20,000, as shown by def't's bill of exception numbered III.

III error. The court erred in that portion of the charge wherein it instructed the jury as follows: The only defense presented by the other defendants, in support of which any proof has been offered, is that the plaintiff, without the consent of the securities on said bond, granted the defendant company an extension of time for the performance of said contract, and thus released said sureties; and to support this defense they rely upon a letter of the plaintiff's, dated 16th July, and offered by defendants in evidence, suggesting an extension, and the response to said letter made by the president of the defendant company in its name. We are of opinion that said letter does not constitute such a proposition for an extension of time as could by the acceptance of the president of the company (or the company acting by the president alone) be*cause* a binding agree-
36 ment for such extension without the consent of the sureties and release them thereunder.

You are therefore directed to find for the plaintiff, against the defendant company, the amount of $14,820.00 and $5,000, and eight per cent. per annum interest thereon from the 20th of August, 1884, and against the other defendants who signed said bond so much of said sum as shall not exceed $20,000.

IV error. The court erred in not instructing the jury as requested by defendants, as follows:

Charge No. I.

The jury are instructed that if they find in this case that Morphy was president of the Texas Investment Company, Limited, at the time of the alleged extension of time on the contract sued on and was, under the testimony, in the habit of acting as the general business agent of the corporation with its knowledge and without objection, actual authority may be infer-ed from such acts and the company would be bound by them; and you are instructed that if with such authority said Morphy, as president, accepted a proposition extending the time of the delivery of the cattle under the contract sued on, that such act would be binding on the corpora-
37 tion, and you should so find.

V error. The court erred in not instructing the jury as requested by the defendants, as follows:

Charge No. II.

The defendants, J. P. Smith, J. D. Reed, Boaz, Henderson, and Fore, ask the court to charge the jury that any material alterations

in the terms of the contract between plaintiff, W. T. Holt, and the defendant, The Texas Investment Company, Limited, without the consent of the defendants Smith, Reed, Boaz, Henderson, and —, would release them; which charge the court then and there refused to give, and said defendants then and there excepted.

VI error. The court erred in not instructing the jury as requested by the defendants, as follows:

Charge No. III.

The jury are instructed that if they believe from the evidence that at the time the plaintiff wrote the letter of date of July 16, 1884, wherein plaintiff proposed to grant defendants, Investment Company, Limited, an extension of time for the delivery of the cattle mentioned in the contract sued on, that plaintiff wrote and mailed another letter, enclosed in a different cover or en-
38 velope, containing another proposition on a modification of the proposition, first requiring the sureties to join in such extension, and the first proposition made to the investment company, without referring to or requiring the assent of the sureties, was alone received by said investment company and accepted by it without the knowledge or assent of the sureties, then this would constitute a binding contract between the principals and would be such a charge or alteration in the original contract as would operate a release of such surety therefrom; which charge was then and there refused by the court, and said defendant then and there excepted.

VII. error. The court erred in refusing to allow the defendants to prove by W. J. Morphy that he had been accustomed to exercise the authority to make contracts and accept and grant extensions on contracts & generally to attend to the business of the company without consulting with or being directed by said executive committee, and his acts so done had been recognized and acquiesced in by said investment company, and that at the time referred to, when he
39 sent the telegram and letter accepting the proposition of extension, he was in the habit of exercising such authority for said company without consulting with or being directed specially so to do by said executive committee, all of which appears by reference to bill of exceptions No. 3 A.

VIII error. And said plaintiffs in error say that in the record and proceeds aforesaid there is manifest error in this, to wit: That by the record aforesaid there is error in the several rulings of the court, to which exception has been taken, and that by the record aforesaid it appears that judgment aforesaid, in form aforesaid given, was given for the said defendant in error aforesaid, against the plaintiffs in error aforesaid, whereas by the law of the land the said judgment ought to have been given for the plaintiffs in error aforesaid, and the said plaintiffs in error pray that the judgment aforesaid, for the errors aforesaid and other errors in the record and pro-

ceedings, aforesaid, as the same may appear more fully therein, may be reversed, annulled, and altogether held as nothing, and
40 that the said plaintiffs in error may be restored to those things which they have lost by reason of said judgment.

CARTER, WYNNE & DE BERRY,
Att'ys for J. P. Smith and J. D. Reed.
HUNTER & STEWART,
Att'ys for D. Boaz, Plaintiffs in Error.

Endorsed: No. 739. J. P. Smith *et al. vs.* W. T. Holt. Assignment of errors by Smith, Reed, & Boaz. Filed July 22, 1886. A. J. Houston, clerk, by Jas. D. Adams, deputy. Carter, Wynne & DeBerry, att'ys for Smith — Reed; Hunter & Stewart, att'ys for Boaz.

Petition for Writ of Error. Filed Feb'y 24, 1886.

UNITED STATES OF AMERICA,
Northern District of Texas, at Dallas, Texas:

To the honorable justices of the Supreme Court of the United States.

And now comes J. P. Smith, J. D. Reed, and David Boaz, by Carter, Wynne & DeBerry, Robertson & Coke, Hunter and Stewart, their attorneys, and complains that in the records and proceedings and also in the rendition of judgment in a suit between Wm. T. Holt, plaintiff, and Texas Investment Company, Limited; Fore, Morphy & Henderson, a firm composed of Walker Fore, W. J. Morphy, and R. M. Henderson, and W. J. Morphy individually, J. P. Smith, J. D. Reed, and David Boaz, defendants, tried in
41 the circuit court of the United States for said northern district of Texas, at Dallas, at January term thereof, 1886, and in which judgment was rendered against your petitioners, J. P. Smith, J. D. Reed, & D. Boaz, as well as against said Texas Investment Company and the said W. J. Morphy, on, to wit, the 13 day of February, A. D. 1886, manifest error hath intervened, to the great damage of the said J. P. Smith, J. D. Reed, & D. Boaz; and petitioners further say that they have on this day *gave* notice to and requested the said Texas Investment Company, as well as the said W. J. Morphy, to join them in the prosecution of the petition and writ of error herein prayed for, and they have refused so to do; a copy of which notice and the refusal so to join is filed herewith as part of this petition, marked "Exhibit A."

Wherefore they pray for the allowance of a writ of error in their own names & on their own behalf, and for such other process as may cause the same to be corrected by the Supreme Court aforesaid.

CARTER, WYNNE & DE BERRY,
ROBERTSON & COKE,
HUNTER & STEWART,
Att'ys for Plaintiffs in Error.

Allowed Feb'y 24, 1886.

A. P. McCORMICK, *Judge.*

"EXHIBIT A."

42 In the Circuit Court of the U. S. for the Northern District of Texas, at Dallas.

W. T. HOLT *vs.* TEXAS INVESTMENT CO., Limited, *et al.*

To the Texas Investment Co., Limited, and W. J. Murphy, defendants in the above cause:

You are hereby notified that J. D. Reed, J. P. Smith, and D. Boaz, also defendants in said cause, will this day file in this court a petition for a writ of error to the Supreme Court of the United States in said cause, and you are hereby notified to appear and join in said petition and writ of error; otherwise said defendants, Reed, Smith, & Boaz will move for a severance and prosecute said writ alone.

(Signed) H. G. ROBERTSON.
HENRY C. COKE.
A. M. CARTER,
HUNTER & STEWART &
R. M. WYNNE,
Att'ys for Smith, Reed, & Boaz.

We accept service of the above notice and waive copy and decline to join with our said codefendants, J. P. Smith, J. D. Reed, and D. Boaz, in their petition and writ of error in above cause, this Feb'y the 24, 1886.

(Signed,) W. J. MORPHY.
TEXAS INVESTMENT CO., LIMITED,
By W. J. MORPHY, *President.*

Endorsed: No. 739. J. P. Smith, J. D. Reed, & D. Boaz *vs.*
43 Wm. T. Holt. Petition for writ of error. Filed Feb'y 24, 1886. A. J. Houston, clerk.

Writ of Error Bond. Filed Ap'l 1st, 1886.

In the Supreme Court of the United States.

J. P. SMITH, J. D. REED, and D. BOAZ *vs.* W. T. HOLT.

Know all men by these presents that we, J. P. Smith, J. D. Reed, and D. Boaz, and W. R. Curtis, T. J. Atkinson, E. F. Ikard, & J. J. Hittson, as sureties, are held and firmly bound unto W. T. Holt in the sum of thirty thousand dollars, to be paid to said W. T. Holt, his executor- or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 9th of March, A. D. 1886.

Whereas the above-named J. P. Smith, J. D. Reed, and D. Boaz have presented a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the suit of W. T. Holt *vs.* The Texas Investment Copmany, Limited, a private corporation; Fore, Morphy & Henderson, a firm composed of Walker
44 Fore, W. J. Morphy, and R. M. Henderson, and against J. P. Smith, J. D. Reed, David Boaz, and W. J. Morphy, in the circuit court of the United States for the northern district Texas, at Dallas, Texas, on the 13th day of February, 1886, in which said plaintiff, W. T. Holt, recovered a judgment against the Texas Investment Company, Limited, as principal, J. P. Smith, J. D. Reed, D. Boaz, & W. J. Morphy, as sureties, for the sum of twenty thousand dollars, with interest at the rate of eight per cent. per annum from that date until paid, together with all costs of suit, and against the Texas Investment Company, Limited, for the further sum of two thousand one hundred and sixty-nine dollars and fourteen cents, and the said Walker Fore & R. M. Henderson recovered judgment against said W. T. Holt for their costs: Now, therefore, the condition of this obligation is such that if the above-named J. P. Smith, J. D. Reed, and D. Boaz shall prosecute their said writ of error to effect and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

	J. P. SMITH.	[SEAL.]
45	J. D. REED.	[SEAL.]
	DAVID BOAZ.	[SEAL.]
	W. R. CURTIS.	[SEAL.]
	T. J. ATKINSON.	[SEAL.]
	E. F. IKARD.	[SEAL.]
	J. J. HITTSON.	[SEAL.]

THE STATE OF TEXAS, *Tarrant County:*

I, J. M. Hartsfield, the clerk of the district court within and for the county of Tarrant, in the State of Texas, do hereby certify that W. B. Curtis, T. J. Atkinson, E. F. Ikard, and J. J. Hittson, the sureties on the above and foregoing bond, and whose genuine signatures appear thereto, are solvent and worth the amount of said bond, and that I would unhesitatingly accept and approve a bond with said parties as sureties and for said amount of thirty thousand dollars if offered to me for approval.

Given under my hand and seal of office, at my office, in the city of Fort Worth, in Tarrant county, Texas, this the 20 day of March, A. D. 1886.

(Signed) J. M. HARTSFIELD,
Clerk of the District Court of Tarrant County, Texas.

(Endorsed:) No. 739. Cir. court. J. P. Smith, J. D. Reed, D. Boaz, *vs.* W. T. Holt. Writ of error bond

46 The above and foregoing bond examined and approved as good and sufficient that the plaintiffs in error, J. P. Smith, J. D. Reed, & D. Boaz, shall prosecute their writ of error to effect, and that if they fail to make good their writ of error shall answer all damages & costs.

The clerk of the United States circuit court for the northern district of Texas will file this bond.

Done at Graham, Texas, M'ch 22, 1886.

(Signed) A. P. McCORMICK, *Judge.*

Filed Ap'l 1, 1886.

A. J. HOUSTON, *Clerk,*
By JAS. D. ADAMS, *Deputy.*

Writ of Error. Filed Ap'l 10, 1886.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the northern district of Texas, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you or some of you, between William T. Holt, plaintiff, and Texas Investment Company, Limited, Fore, Morphy & Henderson, a firm composed of Walker Fore, W. J. Morphy, & R. M. Henderson, and W. J. Morphy, J. P. Smith, J. D. Reed, and David Boaz,
47 defendants, a manifest error hath happened, to *a* great damage of the said J. P. Smith, J. D. Reed, & David Boaz, as by their complainant appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the said Supreme Court, the 22d day of M'ch, in the year of our Lord
48 one thousand eight hundred and eighty-six.

[SEAL.] (Signed) A. J. HOUSTON,
Clerk of the Circuit Court of the United States for the Northern District of Texas, at Dallas.

Endorsed: No. 739. Circuit court. J. P. Smith, J. P. Reed, & David Boaz *vs.* Wm. T. Holt. Writ of error. Filed Ap'l 10, 1876. A. J. Houston, clerk, by Jas. D. Adams, deputy.

Citation in Error. Filed Ap'l 12, 1886.

United States of America to W. F. Holt, or Ball and McCart, his attorneys of record, of Ft. Worth, Tarrant county, Texas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday in October, A. D. 1886, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States in and for the northern district of Texas, at Dallas, wherein J. P. Smith, J. D. Reed, and D. Boaz are plaintiffs and the said Wm. T. Holt is defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties
49 in that behalf.

Witness the Honorable A. P. McCormick, one of the judges of the circuit and judge of the district court of the United States in and for the northern district of Texas at chambers, Graham, Texas, this 22d day of March, A. D. 1886.

(Signed) A. P. McCORMICK,
U. S. Dist. Judge.

Attest seal of said court at Dallas, Texas, April 9, 1886.
[SEAL.] (Signed) A. J. HOUSTON, *Clerk.*

Endorsed: No. 739. Circuit court. J. P. Smith *et al. vs.* Wm. T. Holt. Citation in error. Filed April 12, 1886. A. J. Houston, clerk, by Jas. D. Adams, deputy.

STATE OF TEXAS, *Tarrant County:*

J. P. SMITH *et al.*, Pl'f- in Error, *vs.* W. T. HOLT, Def't in Error.

I, W. B. Hale, being first duly sworn, do depose and say that I have this day delivered to Rob't McCart, a member of the firm of Ball and McCart, attorneys, a true copy of the citation in error in the case of J. P. Smith *et al. vs.* W. T. Holt, signed by the Honorable A. P. McCormick, United States district judge for the
50 northern district of Texas, of the 22 day of March, 1886, attested by A. J. Houston with the seal of said circuit court, at Dallas, Texas, April 9, 1886, and that I am not a party to said suit or in anywise interested therein, and that the original citation of said copy delivered to said McCart is hereto attached and returned with this my affidavit.

(Signed) W. B. HALE.

Sworn and subscribed to before me, the undersigned authority, this the 10th day of April, 1886.

[SEAL.] ZANE CITTI,
Notary Public, Tarrant Co., Texas.

Endorsed: No. 739. In U. S. circuit court, Dallas, Texas. J. P. Smith *et al. vs.* Wm. T. Holt *et al.* Filed Ap'l 12, 1886. A. J. Houston, clerk, by Jas. D. Adams, deputy.

51 In the United States Circuit Court for the Northern District of Texas, at Dallas.

I, A. J. Houston, clerk of the United States circuit court for the 5th circuit and northern district of Texas, at Dallas, do hereby certify that the foregoing forty-nine pages contain a full, true, and correct transcript of the original petition, Exhibits A & B, amended answer of Reed and Smith, original answer of D. Boaz and Walter Fore, bill- of exceptions Nos. 1, 2, & 3, judgment, assignment of errors, petition for writ of error, writ of error bond, writ of error, and citation in error as appears from the records and files in the case of Wm. T. Holt *vs.* Texas Investment Company, Limited, *et al.*, No. 739 on the dockets of said court.

In testimony whereof I hereunto affix the seal of said court, at Dallas, and the name of the clerk thereof, this 18th day of Sept'r, A. D. 1886.

[The seal of the U. S. Circuit Court, Northern Dis't Texas, Dallas.]

A. J. HOUSTON,
Clerk of said Court.

Endorsed on cover: N. Texas C. C. U. S. No. 805. J. P. Smith, J. D. Reed, & David Boaz, plaintiffs in error, *vs.* William T. Holt. Filed October 18, 1886.